IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7486 OF 2006

Mohandas Karamchandani. .. Petitioner.

vs.

Haresh Pribhdas Bhojwani
Prop. M/s. Reena Constructions
& Ors. . .. Respondents.

Mr. P.D. Dalvi for petitioner.
Mr. V.N. Tayade for respondent No. 1.

CORAM : A.P. DESHPANDE, J.

DATE : 15th November, 2006.

P.C.

. The respondent no. 1 is the plaintiff whereas the present petitioner is defendant no. 2 and the respondent no. 2 herein is the defendant no. 1. The suit is for perpetual injunction was filed and in the said suit the plaintiff moved an application for temporary injunction seeking to restrain the defendants from interfering with his possession over the suit property. The trial Court granted ad-interim order of status quo. At a later point of time, the plaintiff moved an application under Order 39 rule 2(a) for taking action against

the defendants by contending that the defendants have committed breach of the order passed by the trial Court. In the said proceedings, initially the defendants raised a preliminary objection to the jurisdiction of the trial Court. Hence a preliminary issue was framed under Section 9A of CPC and it came to be answered by holding that the trial Court has jurisdiction. The plaintiff has filed his examination-in-chief on affidavit and when the plaintiff made an application seeking permission to cross-examine, the trial Court has rejected the said application by holding that the said application has been belatedly filed with a view to delay the proceedings.

2. The learned counsel for the petitioner submits that as the very proceedings are likely to result in serious penal consequences such as punishment for violation of the order passed by the Court, the petitioner need to be permitted to cross-examine the plaintiff touching the affidavit, as otherwise the same would result in miscarriage of justice. He submits that even if it is assumed that there is some delay on the part of the petitioner in making a prayer for permission to cross-examine the respondent herein can be adequately compensated. The learned counsel for the plaintiff-respondent supports the order passed by the trial Court which is impugned in this petition. Alternatively he

submits that the respondent-plaintif is unnecessarily dragged into this court and if the application for cross-examination is to be allowed, the same should be on payment f cost of Rs. 5000/-. The learned counsel for the petitioner assures that the petitioner will not seek any further adjournment in the proceedings before the trial Court. I have no doubt that refusing the permission to cross-examine the plaintiff would result in failure of justice more so when the proceedings are in relation to Order 39 rule 2(a) for breach of the order passed by the Court. No doubt, the respondent-plaintiff need to be adequately compensated.

3. In the interest of justice, I allow the petition. The order passed by the trial Court which is impugned in this petition is quashed and set aside. This order is subject to payment of costs of Rs. 5000/- by the petitioner to the respondent-plaintiff within a period of two weeks from today. Payment shall be made by deposit thereof in the trial Court. The trial Court shall permit the petitioner to cross-examine the plaintiff touching the examination-in-chief affidavit. As the petitioner has undertaken not to seek any adjournment, the trial Court is directed to expeditiously decide the proceedings under Order 39 rule 2(a) after granting fair opportunity to the

parties of being heard.

. C.C. expedited.

(A.P. Deshpande, J.)